



SATURDAY, NOVEMBER 25, 1882.

Announcements To-Day.

American Institute—see, in this column.

Academy of Music—Matthew Williams & Co.

Acreage—Brewery and dist.

Bijou Open House—See Separate.

Brooks' Theatre—Theatrical Bits, Matinee.

Brown's Museum—Frolics and Fun.

Big Indian Wigwam—Indian and Indian.

Daly's Theatre—Our English Friend.

Fifth Avenue Theatre—Virginia Minstrel.

Globe Musical—See Poetry.

Grand Opera House—The Van Winkle Matinee.

Hayes' Theatre—Music Box—Matinee.

Madison Square Theatre—Young Men, Washington Mat., Nicker's Garden—In a Fog, Matinee.

New York Museum—Antiques.

San Francisco Minstrels—Rehearsal and Matine.

Shaw's Theatre—See Separate.

Thalia Theatre—Our English Friends, &c., Matinee.

Theatre Comique—Marcello Lucia.

Tony Pastor's Theatre—Sports.

Union Square Theatre—Frolics.

Wadsworth's Theatre—As You Like It, Matinee.

Windham's Theatre—Matinee.

Sherman and Arthur.

When JOHN SHERMAN wanted the New York Custom House to serve his own personal and political objects, looking forward to the nomination for President, he promulgated changes against Gen. ARTHUR, then Collector, to deprive him of office. He addressed an official letter to him, dated Jan. 31, 1879, from which the following extracts are taken:

"Various classes of administration have continued and increased during your incumbency."

"Persons have been regularly paid to you who have rendered little or nothing, the expenses of your service have increased, while its results have diminished. Bribe, gratuities in the shape of boxes, have been received by your subordinates in several branches of the Custom House, and you have no cause supported the claim to exert these services."

On the same day the Fraudulent President, acting under SHERMAN's instruction, issued an order, saying:

"I regard it as my plain duty to suspend you, in order that the office may be honestly administered."

These charges contain an impeachment of the official and the personal integrity of Gen. ARTHUR. They could hardly be stronger or more offensive than in this direct language of his superiors, who made the inculpation the ground for his removal.

JOHN SHERMAN was aided in a part of this work by W. BATEMAN of Cincinnati, who figured at Washington as the manager of SHERMAN's Campaign Committee in 1876. In that capacity BATEMAN was charged, as appears by the Treasury investigation, with having received stationery, furniture, and other public property from the Treasury Department, for the use of that committee.

There is now a vacancy for United States Judge in the Southern district of Ohio. The late incumbent of that office was hardly laid in his grave before JOHN SHERMAN pushed to Washington to ascribe the vacancy for his henchman, BATEMAN!

This demand is characteristic of a cool audacity which has no parallel.

A Constitutional Question from Texas.

The following letter from Texas presents a question of interest to the inhabitants of many other parts of the country:

"Sir: In some towns of this State, African-slaves, there are ordinances compelling men between the ages of 18 and 45 to work on the streets certain number of days, or face a substitute or a certain amount of money. In addition to this ordinance, there is one providing that any slave who fails to be considered a mischievous, punishable by fine or imprisonment. Now, I want to know if such ordinances are valid. Are they not in violation of the Constitution of the United States prohibiting slavery? In my opinion street duty, according to these ordinances, may be made nothing but an institution of temporary slavery; the result of which is that the slaves do not declare the failure to pay such taxes to be a violation of the law?"

Yours respectfully,

"E. C. F.,
"ALEXANDRIA, Texas, Nov. 15."

We do not think the ordinances mentioned by our correspondent are forbidden by the amendment to the Constitution of the United States which forbids slavery or involuntary servitude except as a punishment for crime where the party shall have been duly convicted.

Taxation, that is to say, the raising of a certain amount of money to be expended upon the improvement of the highway, seems to be the main purpose of the enactment in question. The persons to whom it applies are at liberty to pay the money or do the work. If the municipal body which enacts the ordinance has the right to tax the people at all for the improvement of the highway, the citizens have nothing to complain of. In the fact that they are offered an option, if they decide to work instead of paying the money equivalent of work, their servitude is not involuntary, but voluntary, and therefore does not fall within the prohibition of the Federal Constitution.

Whether the municipal corporations in Texas which have established these ordinances have the power under the State Constitution to do so, is a different question, and one with which we shall not undertake to express an opinion. The tendency of the decisions in this country has been to hold that ordinances passed by virtue of the general incidental power of municipal corporations must be reasonable, and not inconsistent with the laws and policy of the State; and the courts have repeatedly declared ordinances passed in disregard of this rule to be void.

Courts and law writers do not all agree as to whether labor on the highways is a tax or not. The question arose in this State more than half a century ago, and the old Supreme Court, when KENT was Chief Justice and SPENCER was on the bench, decided that working on the highway was not only more the payment of a tax than training in the militia would have been. Taxes, said the Court, in the popular and ordinary sense of the term, mean pecuniary contributions, and laws are generally to be read in the popular and ordinary sense of their language. Highway labor, according to this decision, is merely personal service to the State enforceable by law. To the same effect is a more modern case in Illinois, holding that a highway assessment on property payable in labor, is not a tax in the proper sense of the word.

On the other hand, seeming authority as Chief Justice COULBY of Michigan, in his work on taxation, speaks of the labor needed to keep the highways in repair as a tax, although a peculiar one, and to some extent at least in the nature of a police regulation. While it is doubtless true, as stated by that learned author, that ordinary tax regulations do not infringe the rights of this nation, we think it clear that highway labor may be regarded as a tax in the broadest sense of that term, inasmuch as it is exacted of the citizen by the State in the exercise of its taxing power.

Whatever view be taken, it would seem that the Legislature itself, however it may be less than lawmaking power, may ordinarily enforce the obligation to work on the highway by the arrest and imprisonment of the delinquent. If the obligation be analogous to that of training in the militia, as suggested by the Supreme Court of this State, its enforcement would be authorized under the police power; it is called "a most comprehensive branch of sovereignty, extending as it does to every person, every

public and private right, everything in the nature of property, every relation in the State, in society, and in private life."

On the other hand, if the requirement be deemed a tax, we find that, in the early history of this country legal process against the body of the person was an ordinary method for the collection of personal taxes.

The laws providing for arrest and imprisonment in such cases have been for the most part repealed, but license taxes are still enforced by fine and imprisonment in many of the States.

Appeals in Criminal Cases.

In this State, public opinion favors giving accused persons the right of appeal from the trial court in all matters involving any question of substantial importance. The tendency of legislation for many years prior to the time the new Code of Criminal Procedure took effect, in the autumn of 1871, was in the direction of extending the right of appeal in criminal cases. A decision has just been rendered at Albany, however, by the General Term of the Supreme Court in the Third Judicial Department, which indicates that the appellate system established by that code is defective, and needs immediate amendment.

The prisoner, JOHN PETERS, had been arraigned, tried, and convicted upon an indictment which he alleged was found by a body of men who did not constitute a legal Grand Jury. In other words, he contended that the statute relating to the selection of grand juries in and for the county of Albany, under which law the Grand Jury which indicted him had been drawn, was unconstitutional.

This assertion was based upon the fact that the statute assumed to establish for Albany a local jury law which had not been reported to the Legislature by the Commissioners to revise the statutes.

The question whether the Grand Jury which accuses a person of crime is or is not a constitutional body, would seem to be serious enough for review and final determination in the highest appellate tribunal; yet two of the three Judges of the General Term—which really constitutes the first court of review under our system—held in substance that the Code of Criminal Procedure does not permit any appeal from the action of the trial court in such a case as that of JOHN PETERS, where all his objections to the Grand Jury were overruled, and he was compelled to go to trial upon the accusation as presented.

The Presiding Judge, Mr. Justice LEARNED, while admitting that the prisoner had distinctly asserted that he was not legally entitled to an appeal, nevertheless, in his opinion, held that the Code of Criminal Procedure does not permit any appeal from the action of the trial court in such a case as that of JOHN PETERS, which he had been associated, and JAY HENRY's committee put up tens of thousands while ROMSON himself made a large investment, with the expectation of a liberal return.

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